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U.S. DEPARTMENT OF TRANSPORTATION  
OFFICE OF HEARINGS  
WASHINGTON, DC

MAR - 2 2006

HEARING DOCKET

IN THE MATTER OF  
**KABO AIR LIMITED**  
FAA DOCKET NO. CP05WP0030  
(Civil Penalty Case)  
DMS FAA-2005-22080 - 15

2006 MAR 10 A 11:05

DEPT. OF TRANSPORTATION  
DOCKETS

**REPLY TO FAA'S OPPOSITION TO MOTION TO COMPEL  
DISCOVERY OR TO PRECLUDE THE FAA FROM GIVING OPINION  
TESTIMONY IN THIS CASE**

Comes now the respondent, Kabo Air Limited, through counsel, in response to the Complainant's motion to "Preclude The FAA From Giving Opinion Testimony." The respondent intends to depose Mr. Wilkening for two purposes, neither of which is barred by the regulations referred to by the Complainant.

First, as stated by the Complainant 14 C.F.R. 13.227 states that "an employee of the agency may not be called as an expert or opinion witness for any party other than the FAA..." In the deposition of Mr. Wilkening the respondent intends to question him on factual matters. The respondent intends to question him if he wrote the October 9, 2003 email to Mark H. Goodrich, and if so, the reason.<sup>1</sup> The respondent has the right to question Mr. Wilkening's specific basis for his statements in the October 9, 2003 email. These are all factual matters.

Second, as also stated by the Complainant 14 C.F.R. 13.220 provides that a party may discover facts or opinions held by an expert who is expected to testify at a hearing. At this point the FAA has not proffered an individual who will render an opinion on this

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<sup>1</sup> The FAA's protest that Mr. Goodrich was not the pilot of the flight is true. Mr. Goodrich is a pilot on the airplane, but not on that trip. When the aircraft was in Hawaii, he was sent there to resolve the issue with the FAA. We would like to correct this error.

matter on behalf of the FAA. While the respondent may call Mr. Wilkening to testify to factual matters, as allowed by law, the respondent has no intention of calling Mr.

Wilkening to render an opinion in this case on behalf of the respondent. As of February 2<sup>nd</sup> the FAA has still not responded to the respondent's interrogatory asking who will be their expert in this case. Therefore, the respondent knows of no other person than Mr.

Wilkening, the Manager of Dangerous Goods and Cargo Security for the Federal Aviation Administration's Office of Civil Aviation Security, who would know about the person, if anyone, who will be authorized to render opinions in this matter. Mr.

Wilkening supposedly rendered this statement to Mark Goodrich, who on behalf of respondent, was inquiring about the application of the HazMat rules in their operations.

An inquiry that was necessitated by the FAA's actions in this case. The FAA should not be allowed to delay an answer any longer and then at the last minute come up with a witness who gives opinions.

Moreover, since the FAA still has not told us who will be rendering opinions, what those opinions are and the basis for them, the FAA should be precluded from offering any opinion testimony in this case.

Therefore, we respectfully request that the FAA be compelled to produce Mr. Wilkening for a deposition and timely name the person(s) expected to render opinion testimony, or, in the alternative, to preclude the FAA from rendering any opinion testimony in this case.

Respectfully Submitted,

A handwritten signature in black ink, reading "Michael J. Pangia". The signature is written in a cursive, flowing style.

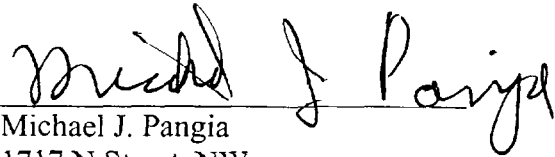
Michael J. Pangia  
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CERTIFICATE OF SERVICE

I certify that a copy of this Response to the FAA's Opposition To Motion To Compel Discovery Or To Preclude The FAA From Giving Opinion Testimony In This Case has been mailed, first class, postage prepaid, to opposing counsel, as follows:

Karla D. Greene  
Federal Aviation Administration  
Office of the Regional Counsel  
Western Pacific Region  
P.O. Box 92007  
Los Angeles, CA 90009-2007

On this 3<sup>rd</sup> day of February, 2006.

A handwritten signature in black ink, appearing to read "Michael J. Pangia", is written over a horizontal line.

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